

UNITED STATES OF AMERICA :  
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 PLAINTIFF, :  
 :  
 VS. : CASE NO. 2:11-CR-10 (1)  
 :  
 SEAN MURPHY : JUDGE SMITH  
 :  
 DEFENDANT. :

The Defendant, through counsel, moves this Court for an order authorizing funds of up to \$5000.00 for the services of Gary Phillips and Associates, an investigator to locate, collect documents and interview certain witnesses critical to the defense of this case. This motion is made to preserve the Defendants Constitutional right to the effective assistance of counsel pursuant to the Sixth Amendment and due process of law pursuant to the Fifth Amendment to the Constitution.

/s/ George C.Luther\_\_\_\_\_  
 GEORGE C. LUTHER (0031940)  
 536 SOUTH HIGH STREET  
 COLUMBUS, OHIO 43215  
 TELEPHONE: (614) 224-7210  
 ATTORNEY FOR DEFENDANT

The Defendant is jointly charged with others in a multi-count indictment. The events of this indictment occurred over

two years ago. The Government has used the services of the FBI and other law enforcement agencies to investigate this crime. The investigation covered several states including Ohio, Pennsylvania, Massachusetts and Tennessee.

Discovery is extensive and witnesses and documents needed for trial are located in many of the above mentioned states. Due to the distances involved and the extensiveness of the investigation, counsel requires the assistance of an investigator to assist with the collection of documents and interviews of potential witnesses, once those witnesses are located.

Counsel needs additional time to investigate, research issues of law, file motions on relevant issues of law that become known through further discovery and investigation and otherwise prepare for trial.

The government has the resources of the FBI and other law enforcement agencies in Ohio, Pennsylvania, Massachusetts and other agencies to do investigation, tests, and otherwise prepare cases for trial. The Defendant is indigent, has appointed counsel, and unable to afford any expenses for an investigator.

Ake v. Oklahoma, 470 U.S. 68 (1985), was a case in which the Supreme Court of the United States held that an indigent criminal defendant had a right to have the state provide a psychiatric evaluation to be used in the defendant's behalf if he needed it.

The Court, in an opinion by Justice Marshall, framed the question as one of "[m]eaningful access to justice", weighing the individual interest in the accuracy of a criminal proceeding against the burden imposed on the state, in light of "the probable value of the psychiatric assistance sought, and the risk of error in the proceeding if such assistance is not offered".

The Court found that both the individual and the state had a strong interest, but that "the State's interest in prevailing at trial - unlike that of a private litigant - is necessarily tempered by its interest in the fair and accurate adjudication of criminal cases." Requiring the state to make one psychiatrist available to indigent defendants was not an excessive financial burden, and the state could not assert the desire to press a strategic advantage at trial.

Unless the Court grants this motion the Government will be given an unfair advantage not available to this indigent Defendant.

Unless the Court grants said request the Defendant will be denied his Sixth Amendment right of effective assistance of counsel and Fifth Amendment right to due process of law, and a fair trial.

/s/ George C. Luther  
GEORGE C. LUTHER (0031940)  
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Compel Disclosure was served on Sal Dominguez, Assistant United States Attorney, and other counsel of record by electronic filing this 20<sup>th</sup> day of April, 2011.

/s/ George C. Luther  
GEORGE C. LUTHER (0031940)  
ATTORNEY FOR DEFENDANT